

Appeal from decision of Alaska State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease AA 48073.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rental

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Olympia, Washington, 3 days before it is due in Anchorage, Alaska, does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected her actions in paying the rental.

APPEARANCES: Karl L. Walter, Jr., Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Eleanor L. M. Dubey appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 19, 1983, denying her petition for

reinstatement of oil and gas lease AA 48073, which terminated by operation of law on May 1, 1983, (the lease anniversary date) for failure to pay timely the annual rental. In its decision BLM found that appellant had not exercised reasonable diligence in mailing the rental payment 3 days prior to the due date. The rental was due on May 2, 1983, since the BLM office was closed on Sunday, May 1. The rental check was actually received on May 4, 1983.

As her first point in her statement of reasons appellant asserts that she acted with reasonable diligence in mailing her payment from Olympia, Washington, to Anchorage, Alaska, on April 29, 1983, 3 days before the due date. In support of this contention, appellant argues that she exercised reasonable diligence and that the delay was due solely to the failure of the Postal Service to deliver the envelope containing the rental check in a timely manner. Appellant also argues that the terms for reinstatement of the lease as set forth in the BLM decision of June 29, 1983, are arbitrary, capricious, and an abuse of discretion.

[1] An oil and gas lease for Federal land on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). BLM found that appellant did not exercise reasonable diligence in mailing the payment from Olympia, Washington, only 3 days prior to its due date in Anchorage, Alaska. We agree. 1/

Appellant's payment, mailed on April 29, 1983, had 3 days, one being a Sunday, to reach the Anchorage, Alaska, BLM office before the lease terminated by operation of law. No evidence in the record suggests that a payment posted in Olympia, Washington, 3 days in advance of the due date, would, in the normal course of business, reach Anchorage, Alaska, in a timely fashion, especially considering that one day was a Saturday and one a Sunday. This Board has repeatedly held that mailing the rental payment 3 days before the anniversary date of the lease does not constitute reasonable diligence. Thomas H. Wilson, 61 IBLA 287 (1982); Jeannette L. Fenwick, 52 IBLA 250 (1981); Bob W. Scott, 46 IBLA 254 (1980); Norman C. Stroink, 44 IBLA 188 (1979).

[3] A failure to make timely payment may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected

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1/ It is noted that the rental check required 5 days for delivery to BLM, and that the petition for reinstatement from appellant required 6 days for delivery, based on the postmarks and time of delivery.

her actions in paying the rental fee. Dome Petroleum Corp., 59 IBLA 370, 88 I.D. 1012 (1981); see Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981). Proximity in time and causality of the unfavorable occurrence are essential elements. Earl Chancellor, 24 IBLA 121 (1976). Accordingly, we are most concerned with circumstances affecting appellant at or near the anniversary date of the lease. Negligence, forgetfulness, or inadvertence do not justify failure to pay rental timely since they are events within the lessee's control. Dome Petroleum Corp., *supra*.

We do not believe that appellant has provided adequate justification for the late payment.

As to the contention of appellant that the terms for a reinstatement of the terminated lease are arbitrary, capricious, and an abuse of discretion, we point that section 401 of the Federal Oil and Gas Royalty Management Act of 1982, 96 Stat. 2447, 2462, January 12, 1983, which provides that oil and gas leases terminated for failure to pay rental on or before the anniversary date of the lease, where it has not been shown that the failure to pay was justifiable or not due to lack of diligence, may be reinstated at a rental rate of not less than \$5 an acre and imposition of a royalty rate of 16-2/3 percent on all production. Further, an applicant for reinstatement must pay the cost of publication of a notice of the reinstatement in the Federal Register, and also pay a fee of \$500 to cover the administrative costs of reinstating the lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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R. W. Mullen  
Administrative Judge

